

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

INTELLECTUAL VENTURES I LLC and
INTELLECTUAL VENTURES II LLC

Plaintiffs,

v.

HEWLETT PACKARD ENTERPRISE
COMPANY,

Defendant.

Civil Action No. 6:21-cv-00226-ADA

**RESPONSE TO SUR-REPLY IN SUPPORT OF DEFENDANT HEWLETT PACKARD
ENTERPRISE'S MOTION TO TRANSFER**

In support of its pending motion to transfer (ECF No. 33), Defendant Hewlett Packard Enterprise (“HPE”) files this response to the sur-reply brief filed by Plaintiff (ECF No. 41-2) in order to correct the record regarding two factual errors: (1) DXC is not “essentially the same company” as HPE—the two companies are separate publicly-traded companies and have been since April 1, 2017; and (2) HPE does not have a data center in Austin, and property tax records omitted by Plaintiff show no buildings on HPE’s property.

Specifically, on November 12, 2021, Plaintiff filed a sur-reply related to HPE’s motion to transfer. ECF No. 41-2. That motion advances two factual errors significant enough to warrant this response. *Id.* at 1.

First, Plaintiff’s sur-reply wrongly conflates DXC and HPE in order to incorrectly attribute DXC’s presence in this District to HPE. Plaintiff states DXC is “essentially the same company” as HPE and that “DXC still maintains a relationship with HPE such that DXC advertises HPE and DXC as being essentially the same company.” ECF 41-2 at 4. Both statements are incorrect.

Plaintiff's Exhibit C advertisement is clearly co-labeled with the logos of DXC and HP Inc., not HPE. ECF No. 41-6. HPE and HP Inc. are separate publicly-traded companies, and have been since November 2015. Ex. A (<https://www.datacenterdynamics.com/en/news/hp-completes-separation-into-two-companies/>). HPE's logo, with a green box, is different. *Id.* DXC also is a separate, publicly-traded company from HPE and has been since April 1, 2017, as confirmed by Plaintiff's Exhibit B. ECF. No. 41-5 at 3. Moreover, Plaintiff's Exhibit D, which calls DXC an HPE company, is a lien affidavit by third-party Electra-Link Inc., not DXC or HPE. *See* ECF No. 41-7. Electra-Link billed services to DXC, not HPE. *Id.* at 4-6.

Second, the motion wrongly reiterates that HPE owns data centers in Austin. ECF No. 41-2 at 2. This is incorrect. Plaintiff's Exhibit E omits portions of property tax records that show there are no buildings on HPE's property. ECF No. 41-8. HPE has attached the complete records, together with omitted page 2, for the Court. Ex. B. The company with \$46 million in improvements at 3301 Hibbetts Road is DXC, not HPE—consistent with HPE's statement in its reply that it sold the data center to DXC in 2018. ECF No. 38 at 2. Clicking on the property tax records for HPE's property, which is a separate property with its own property ID number, shows that “[n]o improvements exist for this property.” Ex. B. The Notice of Appraised Value—of which only the first page was included as Plaintiff's Exhibit E (ECF No. 41-8)—also shows no buildings on HPE's property. Ex. C.

As shown above, these errors are apparent from the documents Plaintiff cites and other public documents. For the reasons stated in HPE's motion and reply brief, the Court should transfer this case to the Northern District of California. *See* ECF Nos. 33, 38.

Dated: November 24, 2021

Respectfully submitted,

/s/ Barry K. Shelton

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served on November 24, 2021, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a). Any other counsel of record will be served by electronic mail on this same date.

/s/ Barry K. Shelton
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